

**§ 4211.23 Approval of alternative method.**

(a) *General.* The PBGC shall approve an alternative allocation method or modification to an allocation method if the PBGC determines that adoption of the method or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to the PBGC.

(b) *Criteria.* An alternative allocation method or modification to an allocation method satisfies the requirements of paragraph (a) of this section if it meets the following three conditions:

(1) The method or modification allocates a plan's unfunded vested benefits, both for the adoption year and for the five subsequent plan years, to the same extent as any of the statutory allocation methods, or any modification to a statutory allocation method permitted under subpart B.

(2) The method or modification allocates unfunded vested benefits to each employer on the basis of either the employer's share of contributions to the plan or the unfunded vested benefits attributable to each employer. The method or modification may take into account differences in contribution rates paid by different employers and differences in benefits of different employers' employees.

(3) The method or modification fully reallocates among employers that have not withdrawn from the plan all unfunded vested benefits that the plan sponsor has determined cannot be collected from withdrawn employers, or that are not assessed against withdrawn employers because of section 4209, 4219(c)(1)(B) or 4225 of ERISA.

(c) *PBGC action on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the request, the decision shall state the reasons for the disapproval and shall include a statement of the sponsor's right to request a reconsideration of the decision pursuant to part 4003 of this chapter.

**§ 4211.24 Special rule for certain alternative methods previously approved.**

A plan may not apply to any employer withdrawing on or after November 25, 1987, an allocation method ap-

proved by the PBGC before that date that allocates to the employer the greater of the amounts of unfunded vested benefits determined under two different allocation rules. Until a plan that has been using such a method is amended to adopt a valid allocation method, its allocation method shall be deemed to be the statutory allocation method that would apply if it had never been amended.

**Subpart D—Allocation Methods for Merged Multiemployer Plans**

**§ 4211.31 Allocation of unfunded vested benefits following the merger of plans.**

(a) *General rule.* Except as provided in paragraphs (b) through (d) of this section, when two or more multiemployer plans merge, the merged plan shall adopt one of the statutory allocation methods, in accordance with subpart B of this part, or one of the allocation methods prescribed in §§ 4211.32 through 4211.35, and the method adopted shall apply to all employer withdrawals occurring after the initial plan year. Alternatively, a merged plan may adopt its own allocation method in accordance with subpart C of this part. If a merged plan fails to adopt an allocation method pursuant to this subpart or subpart B or C, it shall use the presumptive allocation method prescribed in § 4211.32. In addition, a merged plan may adopt any of the modifications prescribed in § 4211.36 or in subpart B of this part.

(b) *Construction plans.* Except as provided in the next sentence, a merged plan that primarily covers employees in the building and construction industry shall use the presumptive allocation method prescribed in § 4211.32. However, the plan may, with respect to employers that are not construction industry employers within the meaning of section 4203(b)(1)(A) of ERISA, adopt, by amendment, one of the alternative methods prescribed in §§ 4211.33 through 4211.35 or any other allocation method. Any such amendment shall be adopted in accordance with subpart C of this part. A construction plan may, without the PBGC's approval, adopt by amendment any of the modifications

set forth in § 4211.36 or any of the modifications to the statutory presumptive method set forth in § 4211.12.

(c) *Section 404(c) plans.* A merged plan that is a continuation of a plan described in section 404(c) of the Code shall use the rolling-5 allocation method prescribed in § 4211.34, unless the plan, by amendment, adopts an alternative method. The plan may adopt one of the statutory allocation methods or one of the allocation methods set forth in §§ 4211.32 through 4211.35 without PBGC approval; adoption of any other allocation method is subject to PBGC approval under subpart B of this plan. The plan may, without the PBGC's approval, adopt by amendment any of the modifications set forth in § 4211.36 or in subpart B of this part.

(d) *Withdrawals before the end of the initial plan year.* For employer withdrawals after the effective date of a merger and prior to the end of the initial plan year, the amount of unfunded vested benefits allocable to a withdrawing employer shall be determined in accordance with § 4211.37.

**§ 4211.32 Presumptive method for withdrawals after the initial plan year.**

(a) *General rule.* Under this section, the amount of unfunded vested benefits allocable to an employer that withdraws from a merged plan after the initial plan year is the sum (but not less than zero) of—

(1) The employer's proportional share, if any, of the unamortized amount of the plan's initial plan year unfunded vested benefits, as determined under paragraph (b) of this section;

(2) The employer's proportional share of the unamortized amount of the change in the plan's unfunded vested benefits for plan years ending after the initial plan year, as determined under paragraph (c) of this section; and

(3) The employer's proportional share of the unamortized amounts of the reallocated unfunded vested benefits (if any) as determined under paragraph (d) of this section.

(b) *Share of initial plan year unfunded vested benefits.* An employer's proportional share, if any, of the unamortized amount of the plan's initial plan year

unfunded vested benefits is the sum of the employer's share of its prior plan's liabilities (determined under paragraph (b)(1) of this section) and the employer's share of the adjusted initial plan year unfunded vested benefits (determined under paragraph (b)(2) of this section), with such sum reduced by five percent of the original amount for each plan year subsequent to the initial year.

(1) *Share of prior plan liabilities.* An employer's share of its prior plan's liabilities is the amount of unfunded vested benefits that would have been allocable to the employer if it had withdrawn on the first day of the initial plan year, determined as if each plan had remained a separate plan.

(2) *Share of adjusted initial plan year unfunded vested benefits.* An employer's share of the adjusted initial plan year unfunded vested benefits equals the plan's initial plan year unfunded vested benefits, less the amount that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year, multiplied by a fraction—

(i) The numerator of which is the amount determined under paragraph (b)(1) of this section; and

(ii) The denominator of which is the sum of the amounts that would be determined under paragraph (b)(1) of this section for each employer that had not withdrawn as of the end of the initial plan year.

(c) *Share of annual changes.* An employer's proportional share of the unamortized amount of the change in the plan's unfunded vested for the plan years ending after the end of the initial plan year is the sum of the employer's proportional shares (determined under paragraph (c)(2) of this section) of the unamortized amount of the change in unfunded vested benefits (determined under paragraph (c)(1) of this section) for each plan year in which the employer has an obligation to contribute under the plan ending after the initial plan year and before the plan year in which the employer withdraws.

(1) *Change in plan's unfunded vested benefits.* The change in a plan's unfunded vested benefits for a plan year is the amount by which the unfunded